In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 139

UNITED AIR LINES, INC., PETITIONER

v.

NATIONAL MEDIATION BOARD; LEVERETT EDWARDS, INDIVIDUALLY AND AS CHAIRMAN OF THE NATIONAL MEDIATION BOARD; FRANCIS A. O'NEILL, JR., INDIVIDUALLY AND AS MEMBER OF THE NATIONAL MEDIATION BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENTS

Believing that the questions presented are important, we do not oppose the petition for a writ of certiorari filed by United Air Lines, seeking review of the judgment of the United States Court of Appeals for the District of Columbia Circuit in Case No. 17,777, decided on March 12, 1964.

That case involved a suit by United to enjoin the respondents (the National Mediation Board and its officers) from holding a representation election among certain of United's employees. The respondents had

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earlier directed that the election be held in discharge of the Board's duty under section 2, Ninth of the Railway Labor Act, 45 U.S.C. 152, Ninth, to certify the collective bargaining representative desired by the majority of United's employees in the craft or crafts involved.

On the same day that the court of appeals decided Case No. 17,777, and in the same opinion, it also decided two additional cases consolidated with No. 17,777. The two additional cases (No. 18,068 and No. 18,072, in the court of appeals) involved a suit by an association of United's employees to enjoin the holding of the same representation election. All three cases were concerned with the same election order of the National Mediation Board (Pet. App. iv).

In Nos. 18,068 and 18,072, appeals by the National Mediation Board and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, respectively, from an order of the district court enjoining the Board from holding an election "in which the form of the ballot does not permit a voting employee to cast a vote against collective bargaining representation" (Pet. App. v) resulted in an affirmance of the injunction (Pet. App. vi). In No. 17,777, United's appeal from the district court's dismissal of its action for an injunction (in which the court of appeals assumed that the dismissal was based on the carrier's lack of standing to challenge the Board's action (Pet. App. v)), the court

below affirmed on the ground that its decision in the other two cases "affords the relief concerning the form of the ballot which United sought" (Pet. App. v–vi).

In addition to the present petition by United, the Brotherhood of Railway and Steamship Clerks has filed a petition for a writ of certiorari to review the decision of the court of appeals in No. 18,072 (No. 138, this Term). The Solicitor General, on or before August 10, 1964, will file a petition for a writ of certiorari to review the court's decision in No. 18,068. Taken together, the cases present issues involving, *inter alia:* (1) The extent of district court jurisdiction to review certification proceedings of the National Mediation Board, compare *Switchmen's Union* v. *National Mediation Board,* 320 U.S. 297; (2) Whether the form of ballot regularly used by the National Mediation Board is violative of the Railway Labor Act; (3) Whether a carrier has standing to challenge the form of ballot to be used by the Board in a representation election among a group of its employees; (4) Whether the Board was required to grant a hearing on the question of the appropriate craft, at either the carrier's request or the request of an association of the employees involved, where the association did not seek to represent those employees for collective bargaining purposes.

These are all questions of importance in the administration of section 2, Ninth of the Railway Labor Act. The issues with respect to the type of ballot used by

the Board are of particular concern. Until they are resolved, the validity of other representation elections being conducted by the Board is open to question. Accordingly, we believe that the writs should be granted in all three cases.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

JULY 1964.

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